

IN THE COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI

LANKA

In the matter of an application for
Revision in terms of Article 138 of
the Constitution of the Democratic
Socialist Republic of Sri Lanka.

Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Case No: **CA/Rev/CPA /36/21**

High Court of Colombo: **3127/2006**

Complainant

Vs.

Ranjith Amarasinghe,
No 563/20, Eksath Mawatha,
6th Lane, Mullariyawa New Town.

Accused

AND NOW

Ranjith Amarasinghe,
No 563/20, Eksath Mawatha,
6th Lane, Mullariyawa New Town.

Accused – Petitioner

Vs.

Hon. Attorney General,
Attorney General's Department
Colombo 12.

Complainant - Respondent

Before: Menaka Wijesundera J.

Neil Iddawala J.

Counsel: Ikram Mohomed PC with

R. Hithath for the

Petitioner.

Argued On: 15/ 03/2021

Decided On: 05/05/2021

MENAKA WIJESUNDERA J.

The instant application for revision has been filed to revise the order of the learned High Court Judge of Colombo dated 16.10.20. At this point this court has to consider whether the notices should be issued on the respondents or not.

It is trite law that when a party files a revision application the party filling the same must convince this court that there are exceptional circumstances which shocks the conscious of this court in the impugned order , and it had been held in **Dharmaratne and another vs. Palm Paradise Cabanas ltd 2003 (3) SLR24 by Amaratunga J.**

In the instant matter the petitioner had been indicted in the High Court of Colombo under section 454 and 459 and upon conclusion of the trial before the learned High Court Judge the petitioner had been convicted, and the said judgment is being canvassed in the instant revision application.

According to the submissions of the petitioner the entire case is based on P34 which is an arbitration award and the learned High Court Judge has decided this to be a forged document. But the petitioner urges that the said document had been decided to be a genuine document by the Commercial High Court decided on 14.5.12. The said order had been appealed to the Supreme Court and the Supreme Court has refused the leave to appeal application on the basis that the said application as being out of time. Therefore the petitioner stated before this court that under the provisions of the Constitution the learned High Court Judge had no jurisdiction to hear and determine the matter.

The learned High Court Judge had observed that the order regarding the arbitration award made on 14.5.12, which declared that the said award was not a forgery had been made by a civil court and the criminal court is not bound by the said order. But the position of the petitioner is that since the Supreme Court has dismissed the leave to appeal application, the learned High Court Judge is bound by the same.

The Counsel appearing for the respondents raised two preliminary objections on issuing notices, they are,

- 1) The petitioner had not added the parties to the caption of the petitioner referred to in the petition,
- 2) The petitioner had filed an appeal against the instant impugned order therefore the instant application for revision is redundant.

Upon perusal of the petition the petitioner has made references to the Board of Investments but the same had not been added as a party. But this court observes the petitioner had not sought any relief from the BOI.

Secondly the petitioner concedes that he has filed an appeal against the impugned judgment, therefore this court has to consider whether a party can file a revision and an appeal simultaneously. Hence at this point this court would very briefly state the difference between an appeal and a revision. It is trite law that revision is a discretionary power of court and an appeal is a statutory right of a party. Therefore when the right of appeal is provided by statute the question is, can a party file a revision application as well. It has been held in **,K.W.Ranjith Samarasinghe vs. K.W. Wilbert CA (PHC) 127/99 by Abrew J.** that “it is well established principle that a party who has an alternative remedy can invoke revisionary jurisdiction of a superior court

only upon establishment of exceptional circumstances.” The same has been held in **Rustom vs. Hapangama 78-79 NLR 225**.

Therefore it is very clear that when a right of appeal lies if a revision application is filed the petitioner has to satisfy court that there are exceptional circumstances. The exceptionality in the instant matter, the petitioner urges is that the document upon which the entire prosecution case lies has been held to be a genuine document by a parallel civil jurisdiction, and the relevant leave to appeal application by the Supreme Court has been dismissed and therefore the learned High Court Judge had no jurisdiction to hear and determine the case.

The learned High Court Judge has very correctly held that the criminal court is not bound by an order of a civil court , and also the dismissal of the leave to appeal application in the Supreme Court has been based based only on the appealable time period pertaining to the Arbitration Act no 11 of 1995 and had not gone in to the validity of the document referred to in the instant matter, hence this court is unable to agree with the submissions of the learned Presidents Counsel that the learned High Court Judge had no jurisdiction to hear and determine the trial in the instant case.

Therefore upon consideration of the above submissions of the petitioner and the respondents on the preliminary objection, this court decides not to issue notices in the instant application.

Therefore the instant application is dismissed.

Judge of the Court of Appeal.

I agree.

Neil Iddawala J.

Judge of the Court of Appeal.